Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Rules and Policies Concerning	)	MB Docket No. 04-256
Attribution of Joint Sales Agreements	)	
in Local Television Markets	)	

To: The Commission

COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

Clear Channel Communications, Inc. ("Clear Channel") hereby submits its comments on the Commission's *Notice of Proposed Rule Making* (the "*NPRM*")[1] concerning the attribution of television joint sales agreements ("JSAs").

The *NPRM* proposes essentially to complete the Commission's decision to treat in-market JSAs of both radio and television stations as attributable interests of the selling party. Last year, in its *Report and Order and Notice of Proposed Rule Making* in the omnibus media ownership proceeding,[2] the Commission attributed radio JSAs but deferred attribution of television JSAs to a future rulemaking on the ground that it had not given prior notice that it would consider the issue. The instant *NPRM* tentatively concludes that television JSAs should also be attributed and requests comment on that conclusion, as well as on treatment of existing JSAs and a number of other questions.[3] The *NPRM* also asks whether it should defer its review

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[1] FCC 04-173 (released August 2, 2004).

[2] *Report and Order and Notice of Proposed Rule Making, 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620 (2003) (the "*Biennial Report and Order*"), *affirmed in part, remanded in part sub nom. Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004).

[3] *NPRM*, ¶¶ 12-20.

of grandfathered pre-November 5, 1996 television local marketing agreements ("LMAs"), currently scheduled for the 2004 biennial review, until the 2006 review.[4]

Despite the *NPRM*'s apparent view that television and radio JSAs are functionally indistinguishable, and that their regulatory treatment should be the same, there may be valid public interest reasons for the Commission to adopt a more restrained approach with respect to attribution of television JSAs. Through numerous comments in the omnibus media ownership proceeding, the Commission should be aware of the urgent need of television broadcasters, particularly in smaller and mid-sized markets, for relief from ownership regulation that too often precludes them from achieving economies of scale that allow them to viably compete in a multichannel universe.[5] Apparently recognizing this need, the *Biennial Review Order* (subsequently stayed in pertinent part by the court of appeals) relaxed the television duopoly rule. In small and medium markets, it adopted a liberalized waiver policy that takes into account such factors as reduction in competitive disparity between the merging stations and the dominant station in the marketplace, enhancement of the commonly-owned stations' ability to complete the transition to digital television, and increases in news and local programming made possible by the combination.[6]

Television JSAs frequently provide similar benefits. To many financially struggling small and medium-market television owners that lack the resources to produce local programming or maintain sales staff, JSAs permit a dependable stream of revenue to the licensee and allow both stations in the arrangement to realize at least some of the benefits of joint ownership. JSAs can allow marginal stations to present news and other local and diverse

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[4] *Id.*, ¶ 21.

[5] *See, e.g.*, Petition for Reconsiderationof LIN Television Corp. and Raycom Media, Inc. in MB Docket No. 02-277 *et al.* (Sept. 4, 2003) and comments cited therein.

[6] *Biennial Review Order*, ¶¶ 228-230.

programming they would otherwise not be able to produce, and can assist them in the costly transition to DTV. An across-the-board rule attributing television JSAs would operate to preclude these public interest benefits in many markets—particularly many of the small and mid-sized markets where those benefits are needed most. At a minimum, the Commission should consider allowing parties to a JSA which, if attributed, would not comply with the local television ownership rules to seek a waiver of the rules based on a public interest showing of the JSA's net benefits.

In the event that television JSAs are made attributable, the *NPRM* requests comment on the treatment of existing JSAs that do not comply with the ownership rules. It notes that with respect to radio JSAs, the *Biennial Review Order* required parties to non-compliant JSAs to terminate their agreements or otherwise come into compliance with the rules within two years.[7] In Clear Channel's view, however, the proper transition analogy is to the Commission's 1999 decision to attribute television LMAs.[8] In its companion *Report and Order* on the local television ownership rules,[9] the Commission elected to fully grandfather non-compliant television LMAs entered into before the adoption date of the *Second Further Notice of Proposed Rule Making* in the proceeding (November 5, 1996), reasoning that "[i]t was on this date that the Commission gave clear notice that it intended to attribute television LMAs in certain circumstances," and that "[t]he parties to these LMAs entered into these arrangements when there was no Commission rule or policy prohibiting them."[10]

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[7] *NPRM*, ¶ 20.

[8] *Report and Order, Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559 (1999) ("*1999 Attribution Order*"), *on reconsideration*, 16 FCC Rcd 1097 (2001).

[9] *Report and Order, Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903 (1999) ("*1999 Local Television Order*"), *clarified on reconsideration*, 16 FCC Rcd 1067 (2001).

[10] *Id.*, ¶¶ 139, 144.

These precise equities exist in the case of existing television JSAs which, if attributed, would be non-compliant with the television ownership rules. As in the Commission's 1999 attribution of television LMAs, until the instant *NPRM* the Commission did not "give clear notice" of its intention to attribute television JSAs.[11] And as with television LMAs in existence at the time of the Commission's 1999 actions, the parties to television JSAs entered into the agreements when no rule or policy prohibited them. Accordingly, the grandfathering relief the Commission afforded with respect to television LMAs should likewise be applied to non-compliant JSAs. Such JSAs should be fully grandfathered, with rights of renewal and extension, at least until the Commission takes up review of grandfathered television LMAs. At such time, if the Commission has not afforded the opportunity at an earlier point, parties to non-compliant JSAs should be allowed to show that the public interest benefits of their particular JSA warrant full grandfathering.

Lastly, the *NPRM* asks whether the Commission's reevaluation of grandfathered television LMAs scheduled for the 2004 biennial review should be postponed until the next scheduled quadrennial ownership review in 2006, given that the Consolidated Appropriations Act obviates the need for a biennial ownership review in 2004.[12] Such a postponement is undoubtedly in order. The Commission adopted modifications of the television ownership rules in the *Biennial Review Order* which likely would make a number of grandfathered LMAs compliant with the local television ownership rules. Those modifications, however, have been stayed and are on remand in certain respects. Given the currently unsettled state of the television ownership rules, it would be senseless and prejudicial to parties for the Commission to undertake a review of grandfathered television LMAs until the uncertainty is resolved. The Commission

[11] Indeed, the Commission's very reason for the subject *NPRM* is its concession that such notice had not been provided in the omnibus media ownership proceeding.

[12] *NPRM*, ¶ 21.

should postpone its scheduled review until at least until the 2006 quadrennial review, and even longer if the status of the television ownership rules remains unresolved at that time.

Respectfully submitted,

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